

Bio-Medical Ethics in Islamic Jurisprudence – Ramifications on Public Health

Author - Saasha Malpani

Associate, Khaitan & Co, saashamalpani28@gmail.com

ABSTRACT

Exploring a niche territory within the field of human rights law, this paper is an attempt to trace the ideals guiding the Islamic understanding of medico-legal ethics. The aim is to ascertain how certain medical practices are viewed under the Muslim law in contrast to conventional perceptions of the Western societies. In order to substantiate the same, the case in point is the medical practice of surrogacy, which is viewed contrarily in different parts of the world. Whether such a practice forms a basic human right arising out of individual autonomy will be discussed vis-à-vis religious and cultural barriers. Also, whether the notion of acceptance or rejection of a practice like surrogacy under Islamic tenets is progressive and in keeping with medical advancement will be evaluated. The paper will provide insights into the Islamic paradigm of medical ethics and endeavor to recommend alterations to it that will benefit clinicians and ethicists equally in providing positive patient care. In order to entertain the possibility of implied universality of common biomedical ethics, there must exist a mutual ground accounting for cross-cultural diversity. The paper runs on the main contention that a liberal, progressive and reformist approach focusing primarily on the benefit of the patient, and permitting a high degree of individual autonomy, is one of the only ways in which growth may be witnessed in the field of medicine.

Keywords: biomedical ethics, Islamic jurisprudence, surrogacy, universality, secularity, cultural diversity, human rights, individual autonomy, public health, medical advancement, religious texts

Introduction

With developments in the practice of medicine among doctors belonging to countries with varied ethnicities, standards for such practices have come to be characterized with the availability of resources such as the level of education, technology, infrastructure,

government liberty, etc. In keeping with these resources, medical ethics guiding doctors are also influenced largely by their religious and cultural affiliation. This cultural affiliation is a crucial component contributing in establishment of diversity experienced about the procedure, technique and scheme of medico-practice in different countries.

Medical science, as a discipline, is indispensable and regarded by all as universal in its scope and application. Medical science operates within the biomedical ethics followed within each institution characterized by the ability to contribute towards development in the field. Comprehensive debates on biomedical ethics have endeavored to give suggestions for the benefit and representation of international interests. The main proposition raised in this regard is the possibility of formation of a universal declaration of biomedical ethics.¹ However, most such discussions may be declared Euro-centric as they do not take into account the values of other ethical systems.² A fifth of the population of the world comprises of people who are followers of Islam and for over 1500 years there has existed rich literature and scholarship regarding the universality and validity of Islam as a religion. Although secular medical ethics and Islamic values hold many beliefs in common, their inferences on medico-legal constructs have differed. To illustrate, the laws guiding adoption unambiguously differ in a predominantly Muslim country from those based in a Western State. Islam, as a religion, has faced historical difficulties in keeping pace with scientific progress. Islamic ethics, on the other hand, are based on God's word directly where the source of life and strength is derived from the God itself. Consequently, the principles based in Islamic ethics are more malleable and exhaustive.³ Certain concepts deliberated under the Islamic medical ethics are universal in nature, for instance – abortions, organ transplantation, and doctor-patient relationship. However, certain other practices are typically Islam-centric and are applicable to only Muslims, for example – obstacles to fasting during Ramadan, diseases that lead to infringement of the state of purity, effect of medicines containing alcohol, etc.⁴

¹ K.M. Hedayat, 'The Possibility of a Universal Declaration of Biomedical Ethics ' [2007] *Journal of Medical Ethics* 17, 17.

² Shahid Alam, 'A Eurocentric Problem' (2010) <<http://www.counterpunch.org/2010/02/10/a-eurocentric-problem/>> accessed April 4, 2017.

³ Sahin Filiz, 'The Place of Bioethics Principles in Islamic Ethics' in Berna Arda, Vardit Rispler-Chaim (eds), *Islam and Bioethics* (1st, Ankara 2012).

⁴ V. Rispler-Chaim, 'Islamic Medical Ethics in the 20th Century' [1989] *Journal of Medical Ethics* 203, 204.

The following paper is an attempt at establishing the influence of Islamic principles on Islamic biomedical ethics. This concept will be furthered in light of the jurisprudential understanding of Islamic law. In a quest to search for some shared denominators despite obvious dissimilarities, a comparison between Western and Islamic biomedical ethics, in light of the practice of surrogacy, will be drawn. Chiefly theoretical in nature, this paper will provide insights into the Islamic paradigm of medical ethics and endeavours to recommend alterations to it that will benefit clinicians and ethicists equally in providing positive patient care.

Scope & Limitations

The significant influence of Islamic jurisprudence on the development of medicine is restricted to a limited scope for the purpose of this paper. The Islamic perspective on matters of this discipline ranges from diverse subjects relating to abortion, gender relations within the patient-doctor relationship, surgeries, contraception, circumcision, euthanasia, organ transplant, gene therapy – to name a few. Hence, the challenge will lie in eliciting the interest of the reader in understanding how Islamic ethics, even when associated with something as fundamental as the human life, function within the four corners of their domesticized law and how they have remained intricately entwined within the constructions of the original Islamic civilization.

The Origin of Medical Ethics in Islam

The most fundamental basis for the Islamic understanding of the human needs was established with the help of a recitation. Prophets are placed among people in order to guide the society along the path of the divine code of ethics or shariah. However, the most elementary tenet of Islam holds that life and vitality of all human beings assumes priority over any other norm or system established by human beings. Since human beings are a creation of God, their lives are considered in the highest regard and above all other precepts.⁵ Expert physicians laid the establishment of medicine in the medieval Islamic world on the foundation that Prophet Mohammad instructed the sick to tend to medicinal treatment in times of disease. Within the ambit of the Quran, hence, the Islamic community developed

⁵ Sahin Filiz, 'The Place of Bioethics Principles in Islamic Ethics' in Berna Arda, Vardit Rispler-Chaim (eds), *Islam and Bioethics* (1st, Ankara 2012).

scientific analysis that guided the system of medicine and encouraged health sciences and health care for the human body.⁶

Medical ethics is a system of moral principles that applies values and judgments to the practice of medicine.⁷ The practical application of this scholarly discipline manifests itself in clinical settings amalgamated with work based on history, philosophy, theology, and sociology.⁸ At this point, it is essential to differentiate between Islamic jurisprudence and Islamic ethics. As mentioned in the introduction, the applicability of Islamic jurisprudence is restricted to Muslims alone. Islamic ethics, on the other hand, provide comprehensive analytical solutions to medical problems faced by all human beings around the globe.⁹ The inclination of ethics in Islam is focused towards humanistic aspects rather than religious morals. It aims to be universal and revealed for all mankind, and not be obligated towards deciphering bioethical issues applicable only to Muslims.¹⁰ For the purpose of this paper, ethics will be observed within the Islamic juridical course, as highlighted in the next section.

Ethics within Jurisprudential Understanding of Islamic Law

Islamic medical ethics may be grounded in virtues that are purely moral in nature. However, the more distinct discourse of Islamic medical ethics is established in Islamic legal tradition. The Islamic *fiqh* (jurisprudential understanding) and the Shariah are considered to be the primary sources of ethical codes for Muslims, which are referred to in situations of ethical and moral dilemma.¹¹ An essential premise on which further analysis will be based is in case a medical predicament arises with regard to questions of abortion, contraception, or euthanasia, ethicists in the Muslim world refer straight to the ethical guide, Shariah. While Islamic ethics may have a global resonance, Muslim countries, in particular, are rigid in their discourse regarding the applicability of such ethics. As a consequence, in case of a medical emergency, the primary importance is accorded not to the health or circumstances of the individual, but the ethical discourse available within the Muslim law. Bioethical deliberation

⁶ Shanks, Nigel J, Dawshe, Al-Kalai , 'Arabian medicine in the Middle Ages' [1984] Journal of the Royal Society of Medicine 60, 62.

⁷ Pollard, B. J., 'Autonomy and Paternalism in Medicine' [1993] The Medical journal of Australia 797, 799.

⁸ *Ibid.*

⁹ Sahin Filiz, 'The Place of Bioethics Principles in Islamic Ethics' in Berna Arda, Vardit Rispler-Chaim (eds), *Islam and Bioethics* (1st, Ankara 2012).

¹⁰ *Ibid.*

¹¹ Aasim I. Padela, 'Islamic Medical Ethics: A Primer' [2007] Bioethics Journal 170, 170.

in Islam is inseparable from the religion itself, according to which, the continuity between ethics and jurisprudence must exist at all times.¹² It is through this practice that it may be concluded that Islamic medical ethics are intricately tied with Islamic law that does the dual job of legislating and according moral sanctity.¹³ Shariah, the path to lead the moral life, forms the fundamental basis on which the Muslim existence depends and it provides the correct path of action under all circumstances.¹⁴ It is also known as the 'collective ethical subconscious'. The Islamic law forms a legal as well as ethical system and a discussion on medical ethics must incorporate shariah.¹⁵ The question of what constitutes ethical in one society will be different from what the other society perceives by virtue of the moral, religious and philosophical principles followed in a community. Medical practitioners are especially required to govern their conduct based on such backgrounds before they make their decisions on medical practice.¹⁶ Many conceptual points of disagreement may exist between Muslims and non-Muslims in the area of biomedical ethics, including concepts of autonomy, beneficence, justice and non-maleficence.¹⁷ In a religion like Islam, where drawing a distinction between medical ethics and humanitarian considerations is a prerequisite, the practitioner must, in advance, take into account potential conflicts that might arise between legal and ethical duty.

From the previous two sections, two moderately contradictory points have come to the fore. In the first section, it was emphasized by way of an anecdote that in theory, Islam accords primary importance to the good health of the individual. In the next section, how Islamic medical ethics function within the rigid scope of the text of their religion has been elucidated. In practice, how is this disparity reconciled and in what way and to what extent do Islamic ethics manifest themselves while considering the ramifications of individual and public

¹² A. Daar & A. Khitam. Bioethics for clinicians: 21. *Islamic Bioethics*. CMAJ 2001; 164(1): 60–63.

¹³ There exists no state in the modern world that enforces the Shari'ah entirely nor one that considers it as the only source of law. However, implementing the Shari'ah is an individual and collective duty in Islam, and it is both a source of law and a moral code. Accordingly, on the personal and at some communal levels the Shari'ah is considered a binding guide to morality as well as the source of legal rulings.

¹⁴ J. Brockopp, *Islamic Ethics of Life: Abortion, War and Euthanasia* (1st, University of South Carolina Press, South Carolina 2003).

¹⁵ Aasim I. Padela, 'Islamic Medical Ethics: A Primer' [2007] *Bioethics Journal* 170, 170.

¹⁶ Gamal I. Serour, *Theological Development in Bioethics: 1992-1994*, The Center for Medical Ethics and Health Policy, Houston, Texas, B. Andrew Lusting (editor), Kluwer Academic Publishers Netherlands, *Bioethics yearbook: Volume 5*, 171-188.

¹⁷ K.M. Hedayat, 'The Possibility of a Universal Declaration of Biomedical Ethics ' [2007] *Journal of Medical Ethics* 17, 17.

health? This will be highlighted through a comparative analysis between the Western secular and Islamic bioethics structure.

Ethics of Surrogacy: Evaluating Islamic Intransigent Perspectives against Western Liberal Viewpoints

In order to satisfy the objective of this paper of contouring the paradigm of applied Islamic medical ethics, a beneficial method would be to equate it with similar standard exercising comparable functions within its own dynamics. In furtherance of the same, this section compares and contrasts medical ethics practiced in the Western secular structure and the Islamic framework. There may be divergences between these two fields; however, in order to succinctly converge the discussion and highlight the central distinction in the ideology of the two kinds of practices, the case of surrogacy has been recruited for the purposes of this section to explain why Muslim law continues to struggle in keeping with the pace of medical advancement.

Surrogacy is an arrangement with the help of which a woman undergoes pregnancy for the intended parents. A woman carries the foetus inside her womb throughout the pregnancy for another woman, and after the end of such pregnancy and delivery of the baby, the new-born is given away to the parents who are unable to have a child of their own.¹⁸ There are various reasons why the wife is unable to conceive a child within her own womb: ageing, absence of uterus, a disease she has that has the risk of being passed on to the child, threat to her own life due to pregnancy, a busy work schedule et al.¹⁹ After delivering the baby to the intended parents, the surrogate mother bears no responsibility whatsoever with regard to the child and his future. There are two kinds of surrogacy recognized: *traditional surrogacy* and *gestational surrogacy*.²⁰ In traditional surrogacy, the surrogate mother is impregnated either naturally or artificially and the end result remains that the child is genetically related to the surrogate mother. In the gestational form of surrogacy, the process of in-vitro fertilization is

¹⁸ S. Islam, A. Shamsuddin, A. Mahmood, 'Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics' [2013] JIMA 1, 3.

¹⁹ *Ibid.*

²⁰ Rachel Cook, Shelley Day Sclater, Felicity Kaganas, *Surrogate Motherhood: International Perspectives* (1st, Hart Publishing, 2003) 308.

used to transfer the embryo as a result of which the surrogate mother is genetically unrelated to the baby.²¹

The Western philosophical perspective primarily concerns itself with the well-being of the mother and child in matters of surrogacy. In the U.S.A, legal issues related to surrogacy fall under the jurisdiction of the state, for the reason that the acceptance of such a practice differs from state to state. While some states like California have written legislations and enforceable contracts related to surrogacy, the others don't recognize this practice and even penalize the commission of the same.²² The liberality of Western notions is highlighted through the fact that a married couple living in a state that does not encourage surrogacy can seek help from a surrogate living in a surrogacy-friendly state so long as the contract is completed and the birth takes place in the surrogacy-friendly state.²³ There is no rigid prohibition of the same. Surrogacy is agreeably recognized to be a controversial deviation from the normally practiced form of reproduction. However, the Western secular medical practice identifies the benefits it confers upon the parents. It grants the couple with a child, opens financial opportunities for the surrogate mother, creates a pathway for otherwise impossible pregnancies, makes way for aged people to start a family and even creates a solid platform allowing a married couple to exercise their right and choice in the manner they prefer.²⁴

In Islam, reinforcement is provided to reproduction, protection of progeny, and health of the child and preservation of lineage.²⁵ Surrogacy, as a concept, is a relatively modern phenomenon even by the standard of Western medical practice. Such a practice that disrupts the order of lineage within a family, mixes up genes and interrupts the order of heredity is unacceptable as per Islamic bioethics.²⁶ It is objectionable that the sperm of a man be transferred into the uterus of a woman who is not his legally wedded wife. In order for the child to be a legitimate child, his or her identity must not transgress the bounds within which

²¹ *Ibid.*

²² Dale Elizabeth Lawrence, Surrogacy in California: Genetic and Gestational Rights, 21 Golden Gate U. L. Rev. (1991).

²³ *Ibid.*

²⁴ S. Islam, A. Shamsuddin, A. Mahmood, 'Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics' [2013] JIMA 1, 3.

²⁵ *Ibid.*

²⁶ Aramesh K, Iran's Experience with Surrogate Motherhood: An Islamic View and Ethical Concerns Journal of Medical Ethics (2009).

matrimony and reproduction take place. Even if there exists mutual consent among the married couple and the surrogate, the religion itself refuses to consider a child procreated from the womb of a woman other than the wife of the man as being a legitimate child. In 1986, the *Council of the Islamic Fiqh Academy* declared “surrogacy is Islamically forbidden and absolutely prohibited due to the consequences of the lineage confusion and loss of motherhood”²⁷.

While Islam grants no place to surrogacy within the Islamic system because it violates the basic tenets laid down in the shariah, the Western criticism of surrogacy is based on more pragmatic and rational reasons. The inter-linkage of genes and heredity is considered obiter as it is a secondary concern. The primary threats relate to questions of custody of the child and exploitation of the surrogate.²⁸ *Firstly*, the issue of custody in cases of surrogacy arises when the marriage breaks off and the husband claims that the child will remain in his custody due to a direct biological relation.²⁹ In such cases, must the dispute be treated as an ordinary dispute or will special circumstances be applicable? In many countries, including India³⁰, there is no legislation governing the practice of surrogacy. There are guidelines issued by medical research bodies but due to insufficient legislative backing, there is little that may be done to address deficiencies and injustice ingrained in the system such as the archaic idea of who the parents of the surrogate child are. As a result, disputes end up being resolved on a case-to-case basis without any concrete law in place. In a rare instance of progressive application of mind by the court while dealing with the issue of surrogacy, the Gujarat High Court applied itself to this novel question in *Jan Balaz v. Anand Municipality*³¹. Recognizing that there is no law on the subject, the court reasoned that merely by providing the ova, “a woman will not become a natural mother”.³² While building the ratio, the Court opined that it is the surrogate mother, who carries the child in her womb, who deserves to be the natural and legal mother. *Secondly*, the condition of the surrogate mother is often exploited on the pretext of being paid a handsome amount of money for such a favour. These women, who

²⁷ Al Kawthari, 'What is the Islamic position on surrogate motherhood?' (<http://islamqa.org/>) <<http://islamqa.org/hanafi/qibla-hanafi/34733>>.

²⁸ S. Islam, A. Shamsuddin, A. Mahmood, 'Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics' [2013] JIMA 1, 3.

²⁹ *Ibid.*

³⁰ A draft ART (Assisted Reproductive Technology) Bill was formulated in 2010, but was never passed as a law. In light of several deficiencies in the draft bill, the Surrogacy (Regulation) Bill, 2016 was introduced in Lok Sabha in November, 2016. The cabinet approved bill, however, has not been passed yet.

³¹ Letters Patent Appeal No. 2151 of 2009 in Special Civil Application No. 3020 of 2008 and Civil Appl.

³² *Ibid.*

assent to undergo pregnancy, are often either ill-paid or not paid at all. This argument, however, is countered based on the reasoning that even a little amount of money can only be financially more profitable for poor women and banning surrogacy altogether on this account solely will prove to be more detrimental than beneficial for the society.³³

In conclusion from this discussion, it is evident that the idea of surrogacy still remains taboo in not only the Islamic world, but even in the realm of Western perspectives. The nature of this practice remains subjective for each community because it is not characterized by concrete universal norms. Criticism has been extended from all directions. However, what remains of essence is the difference in the approaches of Western and Islamic ethics. The Western approach is less rigid and prohibitive and is more liberal and progressive. The Islamic bioethics, due to their unyielding philosophies, are less willing to move forward and extend the courtesy of absolute autonomy to the individual exercising his/her right to choice.

Divided Schools of Thought within the Islamic Community – Views on Surrogacy

As has been established above, the question of permissibility of gestational surrogacy in Islam is gaining increasing recognition. Most Muslim scholars seem to view the question as one of *fiqh* and base their findings on legal analogies and considerations. One of the reasons why gestational surrogacy, as explained above, is being let out of the arrest of rigid and traditional Islamic laws is that the same may be used as a treatment for infertility, as is practiced in medical institutions of some predominantly Muslim countries such as Iran. Most Sunni scholars do not permit surrogate motherhood, since it involves introducing the sperm of a man into the uterus of a woman to whom he is not married. Most Shiite scholars, however, have issued jurisprudential decrees that allow surrogate motherhood as a treatment for infertility, albeit only for legal couples. They regard this practice as transferring an embryo or fetus from one womb to another, which is not forbidden in Shiite jurisprudence. Nevertheless, there is a grey margin involving controversial issues concerning kinship and inheritance. There are countries such as Pakistan where surrogacy is illegal throughout and Malaysia wherein surrogacy has been banned vide the issue of fatwas. While traditional surrogacy is either illegal or looked down upon in terms of religious sentiment by most such

³³ *Ibid.*

States, gestational surrogacy is starting to gain acceptance contingent to the terms, conditions and circumstances specific to the country that is providing it a window of escape.

However, even within the Islamic community, there are groups that are divided by differing ideologies on the same subject. This is squarely evidenced within the four spheres of the concept of surrogacy.

One of the more popular beliefs, as discussed above in the paper, rests on the idea that surrogate motherhood is not allowed because it is affiliated to *zina* (adultery) since the surrogate is carrying the fertilized egg of someone who is not her legal husband. Thus, the child produced has no lineage through legal marriage and will have to be considered as illegitimate. By implication, if the progeny is *haram*, so is the means through which the product is obtained. Moreover, this group argues that since the biological mother has a genuine stake in the product, there is a high probability for emotional and legal confrontation between the two “mothers”. Law, by definition and purpose, intends to remove potential disputes among people and is not legislated to increase the possibility of difference and disagreement. Arguably, the most compelling evidence supporting this group of scholars is the *ayah* in *Surah al-Mujadalah*³⁴ where the Quran says: “...**their mothers are only those who conceived them and gave birth to them (*waladna hum*).**” The Arabic verb “*walada*” is used for the entire process of begetting (*wiladah*); from conception to delivery. It does not restrict itself only to the act of carrying (*haml* in Arabic) and giving birth (*wad'*). Thus, the stipulated *ayah* emphatically denies any rights of motherhood to the surrogate ‘mother’. Additionally, this group contends that the harms of confusion and dispute overshadow the benefit of offering someone a child. To their mind, the various benefits associated with surrogacy hold less importance than the religious text which discourages, *inter alia*, the intermixing of genes, misperception about natural parents and disruption of the order of heredity. “*Harm is to be avoided before benefit is derived*” is an established maxim in Islamic law. Upon these sets of reasoning, divergent arguments are created even within a society so rigidly unified in terms of its sensitivities.³⁵

³⁴ Quran 58: Sura Al-Mujadalah.

³⁵ Brockopp, Jonathan E. "Islam and Bioethics: Beyond Abortion and Euthanasia." *The Journal of Religious Ethics* 36, no. 1 (2008): 3-12. <http://www.jstor.org/stable/40014875>.

The second and lesser-followed group of scholars favor the permissibility of this kind of surrogacy. They rest their claim on secondary considerations and not on any primary principle. This group claims Islamic law recognizes the preservation of the human species as one of its primary objectives (*maqasid*). This fundamental tenet in Islamic law may be illustrated through an anecdote. *The Zamzam tale*, believed by many to be a charmingly orchestrated illusion, dates back to thousands of years ago when the child of Abraham and Hagar, Ishmael, was left thirsty, and eventually very unsettled, by virtue of non-availability of water in the vicinity. Unable to endure such hardship for her son, Hagar ran to-and-fro several times from Hill Safa to Hill Marwah in search of water. After having failed in her attempt, Hagar stood still only to find that as a miraculous intervention of God, a spring of pure water arose from the ground to quench the thirst of her yearning son. The Zamzam well, presently located in Mecca, Saudi Arabia, has been created in this spot to celebrate this occasion during yearly pilgrimages.³⁶ According to a set of interpretations of this anecdote, Islam holds that life and vitality of all human beings assumes priority over any other norm or system established by human beings. Since, human beings are a creation of God, their lives are considered in the highest regard and above all other dictums and edicts. In this backdrop, it follows that allowing married couples to pursue conceiving children forms part of this primary objective. Hence, if a married couple is not able to conceive children themselves, they should be allowed to use means that supersede their inability to do so. If surrogacy is one method, it should also be allowed on grounds of *maslaha* (public interest). The argument that the surrogate mother is not carrying her own child can be countered by saying that she is merely renting her womb as an incubator and is not actually engaged in any act of *zina*. Further, there should be no discord of confusing the lineage of the child as the biological parents are confirmed. In order to validate this practice, an analogy is drawn to contracting a woman to breast feed someone else's child, which is considered to be an acceptable practice in Islam.³⁷

³⁶ The Story of Zam Zam water, (<http://www.darulfatwa.org.au/> 2000) <http://www.darulfatwa.org.au/en/Friday-Sermons/the-story-of-zam-zam-water>.

³⁷ Brockopp, Jonathan E. "Islam and Bioethics: Beyond Abortion and Euthanasia." *The Journal of Religious Ethics* 36, no. 1 (2008): 3-12.

Counter-arguments in effect: Staunch supporters of conventional Islamic principles challenge that the neo-modern argumentation encouraging practices such as surrogacy fails to address the *ayah* in *Surah al-Mujadalah* which defines who is a mother and who is not³⁸. The *ayah* is a primary source of Islamic law and provides conclusive evidence regarding the definition of motherhood as one who both conceives and gives birth. Since neither the biological mother nor the surrogate has comprehensively fulfilled the definition of motherhood, as defined in the *ayah*, Islamic law will not be able to determine who the mother is. This would lead to dispute and harm – neither of which cascades in the ambit of the *maqasid* (objectives) of Islamic law. In essence, the *ayah* cannot be discarded by secondary legal considerations such as *maslaha*.³⁹

Analysing the Hierarchy of Guiding Ideals in Islamic Bioethics - Public Health Requirements

Thus far, the foundation of Islamic bioethics has been established for the purpose of recognizing its effective functioning while balancing between the rights of an individual patient and the principles enshrined in the shariah. Societies today are becoming increasingly multicultural, a natural consequence of which is engagement between different cultures and matters of subjectivity and conflict arising therein. It cannot be denied that a certain minimum threshold of cultural awareness is necessary while delivering medical care, especially in culturally sensitive communities.⁴⁰ Bioethical conflicts may arise in the clinical paradigm as a natural corollary of cultural differences. In order to bridge such a gap, it is essential that each party must understand the ethical constructs that inform the opinions of the other parties.⁴¹ The arena of medical ethics is still in the process of moulding and taking a conclusive shape. Its importance has been emphasized with regard to medical prospectuses. Within the clinical jurisdiction, while the knowledge of diverse medical ethics must be disseminated in an attempt to facilitate wider proficiency, a set of medical ethics that are regressive and based on principles guided solely by religious considerations must not be encouraged in its entirety.

³⁸ Quran 58: Sura Al-Mujadalah.

³⁹ *Ibid.*

⁴⁰ Aasim I. Padela, 'Islamic Medical Ethics: A Primer' [2007] *Bioethics Journal* 170, 170.

⁴¹ *Ibid.*

While my view propagates maximum autonomy and individuality in personal matters, whether a couple begets or does not beget should be considered as being left to the discretion of the secular legal society to settle. The Muslims follow the theological maxims of the Quran and Sunnah when addressing such phenomena and practitioners of Islamic law ascertain whether or not there is sin or not in any act – as that is their primary agenda. In my opinion, the permissibility of gestational surrogacy should exit the gate of theological permissibility and the matter must be considered worthy of legal attention. The roots of Islamic bioethics emanate from interpretations of the religious text, all of which cannot be systematically laid down in this section. However, the most widely practiced ethics are based on certain central beliefs typical to Islam. In medical practice, Islam preaches that maleficence must be condemned and no harm must be caused to any individual “expect for just cause”⁴². Public health care and right to health care services are accorded to all individuals and reaching out for the same falls under the tenets of justice and equity.⁴³ While such rights of an individual are recognized, Islamic ethics are a moral philosophy prioritizing responsibilities and repercussions over individual good. The notion of shared decision-making prevails in Islam. For instance, consent is not as individual based as it is family-based; the choice made by the patient is deemed to impact the whole family and hence, medical decisions are made after gauging the consequences.⁴⁴

As a consequence of these distinctive worldviews of Islamic theology, the moral reasoning between Islam and Western medical ethics is primarily different.⁴⁵ While a common denominator between them is bound to exist vis-à-vis certain fundamental principles, Islamic bioethics do not regard individual autonomy as their central consideration. The focus on patient-preferences is misguided and instead, the most pronounced features assuming prime importance are the consequences, benefits and encumbrances of the proposed treatment.⁴⁶ There is a need for distinctive Islamic ethical principles, which are applicable to Muslims facing practical medical problems, to be moulded in harmony with cross-cultural bioethics,

⁴² David Cummiskey, ‘Islamic and Buddhist Medical Ethics: Morality and Theology in Moral Reasoning’ in Berna Arda, Vardit Rispler-Chaim (eds), *Islam and Bioethics* (1st, Ankara 2012).

⁴³ *Ibid.*

⁴⁴ V. Rispler-Chaim, ‘Islamic Medical Ethics in the 20th Century’ [1989] *Journal of Medical Ethics* 203, 204

⁴⁵ David Cummiskey, ‘Islamic and Buddhist Medical Ethics: Morality and Theology in Moral Reasoning’ in Berna Arda, Vardit Rispler-Chaim (eds), *Islam and Bioethics* (1st, Ankara 2012).

⁴⁶ *Ibid.*

secular traditions and international health policies.⁴⁷ For the sake of implied universality, there must exist a mutual ground accounting for cross-cultural diversity pertaining to biomedical ethics.

Conclusion

Islamic bioethics are based on the fundamental understanding that all actions pertaining to the field of medicine must fall within the ambit of Islamic law and Islamic ethics. Any act related to bioethics is evaluated from an ethical as well as legal standpoint. Islamic law must legitimize all medical procedures and other interactions taking place between the doctor and patient. Jurists who evaluate such actions against principles enshrined in the shariah have the power to declare the pertaining subject as impermissible if it transgresses the bounds of the law. Through the medium of this paper, an understanding of Islamic ethics, medical ethics and Islamic bioethics has been developed. Emphasis was laid on how Islamic medical ethics function within the four corners of the shariah and in order to verify the validity of Islamic norms, its comparison with Western ethics was made in the chosen instance of surrogacy. Surrogacy was chosen as an example to demonstrate in what way the Western and Islamic approaches differ even when it comes to a relatively taboo subject for both the communities. After establishing how religious constraints hinder the progress of Islamic medical practices, it is suggested that while a common platform must be established to universally promote ethical diversity and competency, no ethical practice that is regressive and ultimately detrimental to public health must be encouraged. In the years to follow, a liberal, progressive and reformist approach focusing at the benefit of the patient, and permitting a high degree of individual autonomy, is one of the only ways in which growth may be witnessed in the field of medicine.

⁴⁷ Abdulaziz Sachedina, *Islamic Biomedical Ethics* (1st, Oxford University Press, Oxford 2009) 280.